

**Report of the
Living Wage Ordinance –
Independent Review Commission
April 1, 2004**

**Dr. Walter E. Massey
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Executive Summary

The Living Wage Ordinance – Independent Review Commission was appointed by Atlanta Mayor Shirley Franklin to study the viability of enacting a living wage ordinance proposed last year by the Atlanta City Council. After two months of investigation and deliberations, which included the review of economic research reports, a comparison of the proposed Atlanta ordinance with ordinances in other cities, and testimony by national economists, members of the business community, living wage advocates, and affected workers, the Commission is recommending a carefully tailored living wage ordinance for the City of Atlanta.

Specifically, the Commission recommends that the Atlanta ordinance apply only to direct contractors and subcontractors to the City, who are, by extension, also “city workers,” and should be treated the same way – that is, receive the same salary and benefits – as the City would if its employees performed the work. The Commission understands the Mayor and City Council’s intent that the proposed living wage ordinance would increase the income of certain low-wage workers, thereby reducing poverty in the City of Atlanta, and that the ordinance would become a part of the City’s policies in support of good governance and social justice.

Background

In the summer of 2003, the Atlanta City Council introduced legislation to establish a living wage ordinance in the City of Atlanta. This ordinance, among other things, would require certain groups of employers that hold city contracts to pay their employees a minimum per hour wage plus health benefits and vacation and sick leave, or a higher minimum wage without such benefits. In August 2003, Atlanta Mayor Shirley Franklin commissioned an Independent Review Commission to review the proposed City Council ordinance and study the viability of enacting such an ordinance in the City. She named Morehouse College President Walter E. Massey to chair the Commission and to appoint members to serve who have no direct, vested interest in the outcome of a living wage ordinance.

The members of the Commission are: John Ahmann, partner, Dowling Langley Ahmann, vice chair of the Commission; Betsy Baker, former executive director, Georgia Council for the Arts; Leona Barr-Davenport, president and CEO, Atlanta Business League; Clint Dye, president and CEO, Atlanta Urban League; Julie Hotchkiss, associate professor of economics, Georgia State University, and associate policy advisor, Federal Reserve Bank; Allegra Lawrence, partner, Sutherland Asbill & Brennan; John Rogers, president and CEO, Invesco; Tisha Tallman, regional counsel, Mexican American Legal Defense and Educational Fund; and Kathleen Womack, attorney, Kathleen M. Womack PC.

The Commission engaged the professional services of a consultant, Bill Bolen of The DaVinci Group, to assist with logistical planning, coordination of Commission meetings, research, and the creation of the final written report. Dr. John Handy, chair of the Department of Economics at Morehouse College, served as an advisor to the group, and the law firm Powell Goldstein Frazer & Murphy provided pro bono legal analysis and support. Adrienne Harris, associate vice president for executive communications at Morehouse College, contributed greatly to the final drafting and editing of this report.

Data Review and Analysis

The Commission began its work in January 2004 by reviewing more than 1,000 pages of economic analysis, opinion columns, and research reports on the subject of the living wage and its projected and actual impacts in other cities (reports available on the City of Atlanta website at www.ci.atlanta.ga.us under Mayor's Office/Special Reports & Initiatives/Living Wage Commission.) In addition, the Commission solicited data from the City of Atlanta regarding the number of contractors and the size of the contracts that would be covered under the proposed ordinance. The Commission did receive data, but not in time or in a form that allowed reliable, quantitative analysis of the impact of the proposed ordinance on the City, its businesses or citizens to be made.

In lieu of specific information about Atlanta, the Commission relied heavily on surrogate information, including research and public testimony, as well as the "Atlanta Living Wage Comparison Report" prepared by Powell Goldstein that compares key provisions of the proposed Atlanta ordinance with living wage ordinances in 14 comparably sized cities: Baltimore, Boston, Chicago, Cincinnati, Cleveland, Denver, Detroit, Los Angeles, Minneapolis, New York, Pittsburgh, Portland, St. Louis and San Francisco.

The Powell Goldstein report points out that:

The proposed Atlanta ordinance is the broadest of the ordinances analyzed. Eight of the ordinances have an employee threshold of fewer than 15 employees, but none of these apply to City grants, loans, leases, subcontracts or subtenants. The St. Louis ordinance, which has similar benefits as the Atlanta ordinance, has a threshold of \$50,000 per year for contracts, and \$20 million per year in City financial assistance, including grants and loans. The remaining ordinances either restrict the ordinance to express classes of contracts (e.g., security guards, parking attendants, cashiers, custodial workers, etc.) and/or have higher thresholds for the minimum number of employees and contract dollar amounts. Six other ordinances include nonprofits but each has a higher threshold than \$50,000.

The proposed Atlanta ordinance specifically applies to Hartsfield-Jackson International Airport. Only San Francisco, Los Angeles and St. Louis have ordinances that apply to their airports. In San Francisco, the ordinance applies to airport leases greater than 29 days in length. In Los Angeles, the ordinance applies to businesses whose gross revenues from business conducted on City property is greater

than \$350,000 per year. St Louis is subject to the higher threshold dollar amounts described above.

The Atlanta ordinance has the highest compensation package of all cities in the comparison. The hourly wage for the proposed Atlanta ordinance is \$10.50 with health benefits and \$12 without. The Atlanta ordinance also requires employers to provide 12 days of paid vacation and 10 days of unpaid time off. Only San Francisco and Los Angeles have similar vacation requirements.

The Atlanta ordinance applies to all employees who receive gratuities or tips as part of their compensation package (“tipped employees”). In other words, employees such as bartenders, waiters and skycaps who earn tips, are treated no differently than other hourly employees. Every other ordinance that applies to tipped employees discounts the hourly rate, either by a fixed percentage or in proportion to the tips received.

The Atlanta ordinance contains a pay equity provision, which provides that where a job is occupied by more than 75 percent of one gender, the covered employer must pay the genders equally in that job. No other ordinance contains a similar provision.

(See appendix for full Powell Goldstein report).

Public Testimony

To supplement its in-depth analysis of research reports and data about the living wage, the Commission solicited oral and written input from individuals and entities, both for and against the proposed ordinance, with particular expertise or interests in the subject. During the first of two public hearings, the Commission invited testimony from two nationally respected labor economists, Dr. Mark Brenner, Political Economy Research Institute, University of Massachusetts - Amherst, and Dr. Aaron Yelowitz, Department of Economics, University of Kentucky (see presentations attached).

During the second public hearing, the Commission heard testimony from members of the local business community, including representatives of the Coalition to Keep Atlanta Working, a group that is opposed to the ordinance. A number of speakers testified as to the potential negative impacts of a living wage ordinance on Atlanta firms. Among them was a representative from Delta Air Lines, who indicated the proposed ordinance could cost the company more than \$40 million per year, and the owner of Mick’s Restaurants, who testified that if city-assisted property were included in the ordinance, the restaurant would be forced to close its Underground Atlanta location.

The Commission also heard from local citizens and coalitions that are in favor of the proposed living wage ordinance. Members and supporters of the Atlanta Living Wage Coalition, including a number of people who work full-time jobs and still have difficulty paying for basic necessities, testified about the plight of Atlanta’s working poor and how the

ordinance could help those people rise out of poverty. Supporters of the ordinance pointed out that other cities that have implemented living wage ordinances have not seen major negative impacts, and that Atlanta should also take a stand for wages that could support its workers living above the poverty level.

While the Commission agrees with this goal, it found no evidence that living wage ordinances implemented in other cities have had major impacts on poverty reduction. In addition, analysis shows that some recipients of a living wage reside in families that are not poor or near poverty, and that some recipients may not be residents of the target city. The Commission reviewed the Earned Income Tax Credit program as a complementary poverty reduction program to the living wage ordinance and heard testimony regarding its importance and implementation. However, the Commission does not recommend a city-sponsored EITC in light of the potential significant costs to the City and the required City-State coordination needed for its implementation.

Because pay equity and domestic partner benefits were included in the proposed Atlanta ordinance, the Commission invited special presentations from advocates for these provisions. A representative from the Atlanta Women's Foundation testified about the continuing disparity between pay for men and women in similar jobs, and a city administrator from San Francisco testified that an equal benefits ordinance had been implemented there with little negative impact.

Commission Philosophy/Position

The Independent Review Commission focused its efforts on the mayor's specific charge and scope of work to determine the viability of the living wage ordinance proposed by the Atlanta City Council and to address certain key provisions of the ordinance. In carrying out its work, the Commission assumed that in drafting the proposed ordinance, the Council had a basis for its recommendations regarding the content and scope of the ordinance and, therefore, the Commission only addressed those areas of the Council's proposal where, in its judgment based on the process noted above, it reached different conclusions. Where the Commission found no basis for disagreement with the Council's proposal, it deferred to the recommendations of that body.

The Commission supports a carefully designed living wage ordinance in the City of Atlanta. The group understands the Mayor and City Council's intent that the proposed living wage ordinance would increase the income of certain low-wage workers, thereby reducing poverty in the City of Atlanta, and that the ordinance would become a part of the City's policies in support of good governance and social justice. The Commission agrees with the Mayor and City Council that any entity that does business for the City through a direct contract or subcontract should treat the employees on those contracts, who are, by extension, also "city workers," the same way the City would if its employees performed the work. Because the City has already implemented a living wage for all City employees, who are now paid a minimum of \$10.50 per hour plus health benefits, the Commission can find no reason for offering a lower wage and benefits to employees of direct City contracts and subcontracts

than to City employees. Based on cost of living and living wage rates in other cities, the proposed \$10.50 per hour living wage plus benefits, or \$12 per hour without benefits, is relatively high. The Council ordinance includes a COLA indexing that would raise the living wage rate automatically. The Commission recommends that the COLA indexing be reassessed periodically by the Council to ensure the living wage ordinance is having the intended effect on workers and no unintended effects on the City or local businesses.

Using the same rationale as for the living wage and pay rate issues, because the City already extends domestic partner benefits to its employees, the Commission could find no reason to exclude the Domestic Partnership Equal Benefits Ordinance (EBO) amendment from the proposed living wage ordinance, provided that the terms “domestic partner” and “partner benefits” are clearly and specifically defined and consistent with the overall intent of the living wage ordinance.

While supportive of a living wage ordinance, the Commission was also highly sensitive to the impact of a living wage ordinance on the City’s business environment. In the absence of specific information on which it could project impacts on Atlanta businesses, the Commission relied heavily on the experiences of business communities in other cities. None of the research the Commission reviewed indicates that a carefully tailored living wage ordinance only applied to city contractors of a certain size has had a major, negative economic impact on a city in which it was passed, and the Commission has no reason to believe there would be an inordinate, negative impact on the Atlanta business community if such a carefully tailored living wage ordinance were passed here.

Recommendations

The Commission supports a living wage ordinance that applies only to direct contractors and subcontractors of the City of Atlanta. The Commission would exclude from the ordinance recipients of City financial assistance, on-site service providers at any City location that have no direct relationship with the City, and tenants of City-owned and City-financed properties, including the airport. Given the importance of Hartsfield-Jackson International Airport to the economy of both the City and the State, and the absence of a study on the possible impacts of a living wage ordinance on the airport, the Commission was particularly concerned that any proposed living wage ordinance “do no harm” to the airport. Thus, the Commission specifically recommends that the living wage ordinance not apply to Hartsfield-Jackson airport.

The Commission also addressed the following additional issues related to the proposed ordinance, which the Mayor asked the group to consider:

Contract Threshold – The Commission felt that the proposed contract threshold should be raised to \$50,000 per year to better align with most other ordinances passed nationally and to reduce the scope of the proposed Atlanta ordinance. This threshold increase would make the reporting required by businesses and the monitoring required by the City more manageable.

Consistent with this objective, the Commission supports the threshold of 15 employees for companies covered under the ordinance.

Open Shop Provision – The Commission did not feel the union access clauses or collective bargaining exemptions were necessary components of the ordinance. Fair labor practice laws already exist to govern these issues.

Pay Equity – The Commission felt that the proposed ordinance should not have a pay equity provision. Federal and Georgia laws govern the issue of equal pay for equal work for male and female workers. If the City wants to pursue a *comparable worth* pay policy, the Commission recommends that it be pursued under a separate proposal.

Non-Profit Exemption – The Commission felt that non-profit organizations should not be exempted from the proposed ordinance.

Covered Employees – The Commission felt strongly that the scope of any ordinance should be limited only to the direct employees working on a City contract or subcontract.

Waiver Provisions – The Commission did not study the issue of waiver provisions for emergency contracts, acquisitions and sole source contracts, and defers to the opinion of the City Department of Procurement staff in this area.

Administration and Enforcement – The Commission felt that effective administration and enforcement of an ordinance would be critical to avoiding some of the negative “costs of doing business” with the City that might occur if this area is not handled well. To that end, the Commission felt that narrowing the scope of the ordinance to only direct contractors and subcontractors would dramatically increase the ease of enforcement for the City by allowing the data to be managed only by the Department of Procurement. Raising the contract threshold would also reduce the number of contracts to be monitored to a more reasonable level.

The Commission believes the City would likely have to add at least one full-time staff person and potentially invest in some information system upgrades to effectively manage this ordinance. The Commission feels the City should also invest in ongoing, formal assessment of the ordinance, including periodic studies of its impact on the City and the implications of indexing health care costs associated with the ordinance.

Conclusion

The Independent Review Commission recommends a carefully drawn living wage ordinance that is consistent with decisions the City of Atlanta already has made about the level of pay and benefits for its employees, and narrows the scope of the businesses that would be covered by the ordinance to direct City contractors and subcontractors. To that end, the Commission offers the attached draft ordinance, which includes the provisions it believes will meet those requirements.

DRAFT ORDINANCE ALIGNED WITH LIVING WAGE COMMISSION REPORT

AN ORDINANCE

BY: COUNCIL MEMBERS _____

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF ATLANTA TO ADD A NEW ARTICLE TO ENSURE THAT THE CITY OF ATLANTA AND BUSINESSES THAT CONTRACT WITH THE CITY TO PROVIDE SERVICES TO THE PUBLIC AND TO CITY GOVERNMENT ENGAGE IN RESPONSIBLE BUSINESS PRACTICES BY PAYING THEIR EMPLOYEES A LIVING WAGE AND HEALTH BENEFITS.

WHEREAS, it is important to the health and welfare of all citizens of Atlanta that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

WHEREAS, many service employees in Atlanta and their families live at or below the poverty line; and

WHEREAS, the payment of such inadequate compensation tends to negatively affect the quality of services to the City and the public by fostering high turnover and instability in the workplace; and

WHEREAS, ensuring that businesses benefiting from City contracts promote the creation of jobs that pay a living wage that will increase the ability of Atlanta residents to attain self-sufficiency, decrease economic hardship in the city, and reduce the need for taxpayers to fund social services in order to provide supplemental support for the employees of local businesses; and

WHEREAS, many businesses benefiting from City funds do not provide health insurance to their employees and many such businesses discriminate based on marital status and sexual orientation in their employee benefit plans, adversely affecting employee morale, performance and absenteeism, and increasing the burden on the taxpayers of caring for the uninsured through local and state health programs; and

WHEREAS, a City policy to promote the creation of living wage jobs complements other City programs aimed at meeting the employment and economic development needs of Atlanta and its workforce; and

WHEREAS, paying employees a living wage and health benefits supports the City's policies of good governance and social justice; and

WHEREAS, it is the purpose of this policy to ensure that businesses benefiting from taxpayer funds provide a living wage and health benefits to their employees and that they do so in a nondiscriminatory manner, thus enhancing the welfare of workers of Atlanta; and

WHEREAS, the City is concerned that unmarried employees in committed domestic relationships, including lesbian and gay employees, may receive unequal employment compensation because they are denied valuable employee fringe benefits that recognize and protect their domestic partners in a manner comparable to those benefits offered to employees with spouses; and

WHEREAS, it is the policy of the City to ensure that, to the extent possible, businesses benefiting from the receipt of City contracts do not discriminate against their employees in Domestic Partnerships by denying them benefits comparable to those provided to other employees; therefore;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA AS FOLLOWS:

Section 1: That a new article of the Code of Ordinances of the City of Atlanta, Article _____, is hereby created to read:

Section ____--1. Title and Purpose.

(a) *Title*. This article shall be known as the “Atlanta Living Wage and Health Benefits Ordinance.”

(b) *Purpose*. The purpose of this article is to ensure that when taxpayer-funded contracts are awarded by the City of Atlanta to private businesses, they are used in a way that benefits the interests of the City as a whole by creating good jobs for Atlanta residents and not discriminating against those in Domestic Partnerships in providing benefits. The article therefore encourages the City, its service contractors and subcontractors to pay their employees a wage that will enable a full-time worker to support a family at a level that meets basic needs and avoids economic hardship.

Section ____--2. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) ***Benefits*** means any plan, program or policy provided by a Covered Employer to its Employees as part of the employer’s total compensation package. Benefits includes, but is not limited to: pension and retirement benefits; medical, dental and vision plans or other health benefits; bereavement, family medical, parental and other leave policies; disability, life, and other types of insurance; employee assistance programs; memberships or discounts; moving expenses; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit sharing plans and other compensation programs; vacation; travel benefits; and any other benefits given to Employees, provided that it does not include benefits to the extent

that the application of the requirements of these rules to such benefits may be preempted by federal or state law.

(b) ***Covered Employer*** means:

- (1) The City; or
- (2) A Contractor.

(c) ***City*** means:

- (1) The City of Atlanta; or
- (2) Any agency of the City of Atlanta.

(d) ***City Contract*** means:

- (1) Any contract between the City and any other entity to provide services to the City or its residents where the annual value of payments under the contract is \$50,000 or more;
- (2) Where the same person, business, or one or more of its affiliates or subsidiaries, receives more than one contract from the City during a 12-month period, the value of those contracts shall be combined and the contracts shall be deemed City Contracts if the aggregate annual value exceeds \$50,000;
- (3) Provided, however, that any contract with the City to provide construction services or other work that is subject to city, state or federal prevailing wage laws shall not be considered a City Contract for the purposes of this article.
- (4) Notwithstanding the foregoing, the term “City Contract” shall exclude:
 - (i) Any contract entered into between a Contractor and the City for services provided at Hartsfield-Jackson Atlanta International Airport.

(e) ***Contractor*** means any person or business having at least 15 employees that is a party to a City Contract, or any subcontractor providing services relating to the performance of a City Contract.

(f) ***Domestic Partner*** shall mean a dependent of an Employee who is either (a) registered as a domestic partner with any government entity, or (b) who, with the Employee, sign a declaration in which they attest:

- (1) They share the same primary, regular and permanent residence and have lived together for the previous six months (documentation must be submitted verifying joint residency);
- (2) They have a committed personal relationship with each other that is mutually interdependent and intended to be lifelong;
- (3) They agree to be jointly obligated and responsible for the necessities of life for each other;
- (4) They are not married to anyone or legally separated from anyone;
- (5) They are 18 years of age or older;
- (6) They are competent to enter into a contract;
- (7) They are not related by blood closer than would bar marriage in the state;
- (8) They are each other’s sole domestic partner;

- (9) They agree to file a termination of domestic partnership within 30 days if any of the facts set out in this definition change; and
- (10) Any prior domestic partnership in which their domestic partner participated with a third party was terminated not less than six months prior to the date of such affidavit.

(g) The term “dependent,” as used with regard to the definition of Domestic Partner, shall mean one who relies on another for financial support. Dependency does not depend on whether the dependent could support himself/herself without the supporter’s earnings or whether the dependent could so reduce his/her expenses such that he/she could live independently of the supporter’s earnings. Dependency does not depend on whether the dependent is employed and/or earns a substantial part of his/her own support. Dependency depends on whether the dependent was and is supported, in whole or in part, by the supporter’s earnings.

(1) An Employee’s Domestic Partner shall be deemed a “dependent” of the employee if:

- (i) The Employee makes contributions to the Domestic Partner of cash and supplies, and the Domestic Partner relies upon and uses those contributions to support himself/herself in order to maintain his or her standard of living. The contributions may be at irregular intervals and of irregular amounts, but must have existed for at least six months, and must be continuing.
- (ii) The Employee is obligated, based upon his/her commitment set forth in the declaration of domestic partnership, to continue the financial support of the Domestic Partner for so long as the domestic partnership shall be in effect.
- (iii) The Domestic Partner is supported, in whole or in part, by the Employee’s earnings, and has been for at least the last six months.

(h) ***Employee*** means any person who performs work on a full-time, part-time, temporary, or seasonal basis and includes employees, contingent or contracted workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity, who is employed at a job site covered in whole or in part by a City Contract, for:

- (1) The City; or
- (2) A Contractor
- (3) Provided, however, *Employee* shall not mean any person:
 - (i) Employed in construction work or other work that is subject to city, state or federal prevailing wage laws; or
 - (ii) Younger than 18 years of age; or
 - (iii) Employed during summer months in a program to create summer jobs for students or teenagers; or
 - (iv) Engaged in a bona fide training program, not to exceed 60 days in duration, which will ensure that the person advances into permanent employment; or

(v) Engaged or participating in a bona fide student internship program.

(i) **City Compliance Official or CCO** means the person and/or agency that shall be designated by the Mayor to be charged with primary responsibility for implementing and enforcing this article, including coordinating and ensuring effective compliance by all City agencies.

Section ____--3. Effective Date, Duration of Coverage & Counting Employees.

(a) This article shall take effect 90 days after its enactment and shall apply to any City Contract awarded, renewed, or extended after that effective date. Provided, however, that Covered Employers shall not be required to begin paying the wages and benefits established by this article, or to comply with the article's other requirements, until January 1, 2005. Provided further that the requirements of this article shall apply to renewals or extensions only where the City has the discretion not to renew or extend the agreement.

(b) The requirements of this article shall apply to a Covered Employer for the duration of the City Contract.

(c) When a City Contract becomes subject to the requirements of this article, any subcontractors providing services relating to the City Contract shall immediately become subject to the requirements of this article, regardless of the award or renewal date of the subcontract.

(d) When counting the number of Employees of a Contractor for purposes of determining whether they are subject to the requirements of this article, the following rules shall apply:

(1) All Employees working firm-wide for the Contractor who are working directly on the City Contract whether full-time, part-time or temporary, shall be counted.

(2) Persons who are or will be employed by any contractors or subcontractors, providing services relating to the City Contract shall be counted as if they were employees of the Contractor.

(3) A Contractor shall be deemed to employ the greater of the following:

(i) The greatest number of persons it employed at any point in the 12 months preceding the award of the City Contract; or

(ii) The greatest number of persons it will employ or is expected to employ after award of the City Contract.

(4) A Contractor that, based on these rules, is deemed to employ more than the specified threshold number of Employees required for coverage under this article shall be deemed a Covered Employer for the duration of the City Contract.

(5) A Contractor that employed fewer than the specified threshold number of Employees at the beginning of the City Contract, but then exceeds the threshold during the duration thereof, shall be deemed a Covered Employer

for the remaining duration. In such event, the Contractor shall be obligated to alert the CCO of its change in coverage status within 30 days.

(6) The CCO shall assess the number of persons employed by a Contractor for purposes of determining coverage under this article.

Section ____--4. Living Wage, Health Benefits and Nondiscrimination in Benefits.

(a) A Covered Employer must pay Employees no less than a Living Wage for all hours worked for the City or performing a City Contract, and must provide Health Benefits.

(b) A *Living Wage* shall be \$10.50 per hour beginning January 1, 2005, and each year thereafter shall be upwardly adjusted in proportion to the increase, if any, during the preceding 12-months in the Consumer Price Index for All Urban Consumers for the Atlanta, Ga. MSA.

(c) Providing *Health Benefits* means either

(1) A Covered Employer's providing health benefits for an Employee and/or his/her Domestic Partner and/or dependents where the Covered Employer's contribution to the health benefits package is valued at no less than the Health Benefits Supplement Rate for each hour worked by the Employee; or

(2) A Covered Employer's Paying an Employee a wage rate of no less than the sum of the current Living Wage and the Health Benefits Supplement Rate.

(d) The *Health Benefits Supplement Rate* shall be \$1.50 per hour beginning January 1, 2005.

(e) The City shall publish a bulletin by December 1 of each year announcing the adjusted Living Wage, which shall take effect on January 1. This bulletin shall be distributed to all City agencies and Covered Employers upon publication. Covered Employers shall provide written notification of the rate adjustments to their Employees, and to their covered contractors and subcontractors.

(f) A Covered Employer shall not discriminate by policy or practice in the provision of Benefits between an Employee with a Domestic Partner and Employee with a spouse. Any Benefit provided in any manner contingent upon the existence of a marital relationship must also be provided to an Employee who has a Domestic Partner. The provisions of this paragraph apply to a Covered Employer where work relating to a City Contract is being performed.

(g) A Covered Employer shall be deemed in compliance with Section 4(f) in the following circumstances:

(1) The covered Employer allows every Employee to designate a spouse or Domestic Partner of the Employee's household, and any legally dependent

children of that household member, for inclusion within the employee benefits program.

(2) The Covered Employer provides benefits neither to Employees' spouses nor to Employees' Domestic Partners.

(3) The CCO determines that the Covered Employer is the only prospective contractor willing to enter into an agreement with the City, or the prospective is a sole source provider of the services.

(4) The awarding authority declares an emergency, and the CCO determines that there are no prospective contractors in compliance who can perform the work necessary to end the emergency;

(5) The City Attorney certifies in writing that specialized litigation requirements mandate the use of the Covered Employer.

(6) The CCO determines that the Covered Employer is a public entity that can provide the City with goods, services or an interest in real property of a quality or accessibility that is not available from another source, or that the agreement is necessary to serve a substantial public interest.

(7) The CCO determines that there are no other qualified responsive bidders or prospective contractors who are in compliance and the agreement is essential to the City or City residents.

(8) The agreement is pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs.

(9) The Covered Employer cannot comply with the requirements of Section 4(f) because those requirements are inconsistent with a grant or agreement with a public agency.

(h) In limited circumstances, the CCO may grant a "Reasonable Measures Authorization" to a Covered Employer to provide Employees with a Cash Equivalent Payment in lieu of Benefits that are unavailable due to circumstances outside of the Covered Employer's control. The authorization does not relieve the Covered Employer of its obligation to provide all other Benefits it offers on an equal basis.

(1) The CCO will evaluate each request for Reasonable Measures Authorization on a case-by-case basis and decisions will be based on a consideration of such factors as:

(i) The numbers of benefits providers identified and contracted by the Covered Employer and verified responses from these providers that they will not provide equal benefits coverage;

(ii) The existence of benefits providers willing to offer equal benefits coverage to the Covered Employer;

(iii) The existence of federal or state laws that preclude the Covered Employer from providing equal benefits.

(2) If the CCO approves the Reasonable Measures Authorization, the Covered Employer must provide to Employees with a Domestic Partner a Cash Equivalent Payment. The "Cash Equivalent Payment" shall be the amount of money paid by the Covered Employer for the Benefit given to a similarly situated Employee. To the extent that a Covered Employer limits the

availability of any Benefit to the spouses of Employees, or vice versa, the availability of a Cash Equivalent Payment may be similarly limited. The Cash Equivalent Payment shall be made either on the same schedule as the Covered Employer uses for the Benefit given to Employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent Payment will be required where making such a payment would violate federal or state law.

Section ____--5. Paid Days Off.

(a) Covered Employers shall provide Employees at least 12 compensated days off per year for holidays, sick leave, vacation, or personal necessity. Employees shall accrue one compensated day off per month of full-time-equivalent employment based on hours during which the Employee is entitled to be paid a living wage. Employees shall be eligible to use accrued days off after the first 6 months of employment or consistent with employer policy, whichever is more generous. All paid days off provided by a Covered Employer, including paid holidays and paid days off provided pursuant to a collective bargaining agreement, may, consistent with established employer policy, be counted toward provision of the required 12 compensated days off.

(b) Covered Employers shall also permit Employees to take at least an additional 10 days per year of uncompensated days off to be used for sick leave necessitated by illness of the Employee or a member of his or her immediate family, including his or her Domestic Partner, where the employee has exhausted his or her compensated days off for that year. This provision does not mandate the accrual from year to year of uncompensated days off. The uncompensated leave requirements of this provision shall not apply to any employee entitled to more extensive uncompensated leave pursuant to the federal Family and Medical Leave Act. Where a Covered Employer provides more than 12 compensated days off per year, those days above 12 may be counted towards satisfaction of this requirement.

Section ____--6. No Conflict with Other Labor Standards.

(a) This article establishes minimum standards for the wages, benefits and protections that must be extended to Employees. Nothing in this article shall be construed as prohibiting or conflicting with any other obligation or law. No part of this article shall be construed as applying to any Employee or project where such coverage would be preempted by federal or state law. However, in such circumstances, only those applications of this article for which coverage would be preempted shall be construed as inapplicable.

Section ____--7. Retaliation Prohibited.

It shall be unlawful for a Covered Employer or any other party to take action against a person in retaliation for exercising rights protected under this article. Rights protected under this article shall include the freedom to inform others of their potential rights under this article, and to assist others in asserting such rights. This protection shall also apply to a person who mistakenly, but in good faith, alleges noncompliance with this article. Taking adverse action against a person within 60 days of the person's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

Covered Employers shall also comply with other applicable federal, state and local labor and workplace laws.

Section ____--8. Certification Agreements for Contractors and Beneficiaries.

(a) To be eligible for consideration to enter into or receive any City Contract, a Contractor must file a Certification Agreement with the department or agency of the City responsible for awarding the City Contract and must ensure that contractors and subcontractors that will assist in performing the City Contract also file Certification Agreements. Where contractors or subcontractors are not yet identified, the Contractor shall so indicate and shall file an updated Certification Agreement when any contractor or subcontractor is identified, added or substituted.

(b) The Certification Agreement shall be completed on a form provided by the CCO and shall include the following information:

- (1) A description of the City Contract;
- (2) For a City Contract, the projected annual value;
- (3) The recipient's number of Employees, as calculated under the rules set forth in Section ____--2(d) ;
- (4) If its number of Employees is 15 or more, a pledge by the recipient to comply with the requirements of this article; and
- (5) The names and addresses of any contractors or subcontractors that will assist in performing the City Contract.

(c) Any City Contract that is subject to the requirements of this article shall be deemed void on grounds of illegality where the Contractor fails to file a Certification Agreement before entering into the transaction.

(d) For good cause shown, a Covered Employer that has failed to meet the requirements of Section ____--10 may correct the violation and be permitted to continue the City Contract if it:

- (1) Files the required Certification Agreement within 5 business days of being apprised of the omission; and
- (2) Retroactively compensates, within 15 calendar days, each Employee for all wages and benefits that should have been paid pursuant to this article.

Section ____--9. Monitoring and Reporting Requirements.

(a) The CCO shall be responsible for coordinating implementation of this article by City agencies, and compliance with its requirements by Covered Employers. The CCO shall monitor Covered Employers' compliance and shall report any violations to the City Attorney.

(b) Covered Employers, including covered contractors, subcontractors, tenants, and subtenants, shall file an Annual Report with the CCO by December 1 of each year in which it shall provide the following information:

- (1) For each Employee that performed work relating to the City Contract:
 - (i) The Employee's name;

- (ii) Total hours worked performing the City Contract;
 - (iii) Hourly wage paid;
 - (iv) Hourly cost to the employer of any health benefits provided the Employee.
- (2) An enumeration of the Benefits currently provided with a confirmation that every Benefit provided to Employees with spouses is provided on equal terms to Employees with Domestic Partners.
- (c) Covered Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the CCO access to such records to monitor compliance with the requirements of this article. Where a Covered Employer does not maintain or retain adequate records documenting wages and Benefits paid, it shall be presumed that the Covered Employer paid no more than the applicable federal or state minimum wage, and did not provide Health Benefits.
- (d) Every Contractor, including covered subcontractors, shall post in a conspicuous place at any job site subject to this article an explanation of the current Living Wage and Health Benefits Rates, Nondiscrimination in Benefits Requirements, and other worker protections, conferred under this article.
- (e) A cooperative oversight board shall be created, which shall be composed of equal numbers of representatives of businesses that are subject to this article, not-for-profit organizations, and City staff. The COO shall promulgate regulations prescribing the procedures of the board. The board shall meet at least twice per year in a forum that is open to the public, and shall be afforded by the City access to information needed to monitor implementation and enforcement of this article.

Section ____--10. Implementation and Enforcement.

- (a) The provisions of this article shall augment the City's ordinary procedures for administering its contracts. The CCO shall promulgate implementing rules, regulations, forms, bid and contract provisions, and other materials, as appropriate, consistent with this article, which shall be binding on the City and on Covered Employers. The rules and regulations shall establish procedures for monitoring the operations of Contractors, including their covered contractors and subcontractors, to ensure compliance with this article, and shall establish procedures for regular review of payroll records and investigation and resolution of complaints or violations of any of the requirements of this article. Implementing rules, regulations, forms, bid and contract provisions, and other materials promulgated by the CCO shall be subject to public hearing, and review and comment by the City Council, before they take effect. Where the CCO deems appropriate, or where state or City law so requires, authority over any particular implementation function may be assigned to another body or agency. Through such implementing rules and regulations, the City is hereby delegated the authority to provide guidance for interpreting, administering and implementing this article. Such rules or regulations shall have the force and effect of law and may be relied on by Contractors and other parties in order to determine their obligations under this article. The CCO shall prepare for the public and the City

Council an annual report on the implementation and enforcement of this article during the preceding year.

(b) *Administrative Remedies.* The CCO shall promptly investigate complaints of violations of this article, shall report his or her findings and actions to complainants, and shall use best efforts to prevent, detect, and remedy violations. Where the CCO determines that any person has violated any of the requirements of this article, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering action necessary to correct it. The CCO may recommend to the Mayor any relief appropriate to remedy the violation including, but not limited to:

- (1) Repayment to Employees of wages and benefits wrongly denied;
- (2) Reinstatement of any person wrongly terminated;
- (3) Suspension and/or termination of the City Contract;
- (4) Forfeiture or repayment of any or all of the contract payments awarded by the City of Atlanta; or
- (5) Disbarment of the Contractor or Beneficiary from eligibility for future City Contracts until all ordered relief has been provided, or for a period of two years, whichever is longer.

City agencies shall cooperate in enforcing orders of relief issued by the CCO.

(c) *Prosecution.* Violation of the requirements of this article shall be prosecuted in the municipal court.

(d) *Civil Action by City.* In addition to or in lieu of any criminal prosecution, the City shall have the power to sue in law or equity for relief in any court of competent jurisdiction to enforce this article, including recourse to such civil and criminal remedies in law and equity as may be necessary to ensure compliance with the provisions of this article, including but not limited to injunctive relief to enjoin and restrain any person from violating the provisions of the article and to recover such damages as may be incurred by the implementation of specific corrective actions.

Section ____--11. Remedies Not Exclusive.

This article and the remedies set forth shall not be construed to limit any party's right to bring legal action for violation of any other laws concerning wages, hours, or other standards or rights, nor shall exhaustion of remedies under this article be a prerequisite to the assertion of any other such right.

Section ____--12. Severability.

In the event that any provision of this article shall be held, by any court of competent jurisdiction, to be invalid or unenforceable the remainder of this article shall remain uninterrupted in full force and effect, and the court's holding shall not invalidate or render unenforceable any other provisions herein.

Section ____--13. That all articles or parts of articles in conflict herewith are repealed to the extent of the conflict with this article.

Appendices

- Mayor's Charge to the Living Wage Ordinance – Independent Review Commission
- List of research papers (full reports available on the City of Atlanta website at www.ci.atlanta.ga.us under Mayor's Office/Special Reports & Initiatives/Living Wage Commission)
- Presentations from January 23, 2004 public meeting
- Presentations from February 12, 2004 public meeting
- Atlanta Living Wage Comparison Report prepared by Powell Goldstein Frazier & Murphy, attorneys at law